



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0188]

RIN 1625-AA00

Safety Zones; Misery Challenge, Manchester Bay, Manchester, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Manchester Bay to be enforced during the Misery Challenge marine event, which will involve swimmers, kayakers, and stand-up paddlers. This safety zone will ensure the protection of the event participants, support vessels, and maritime public from the hazards associated with the event. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Coast Guard Sector Boston Captain of the Port (COTP) or the COTP's designated representative.

DATES: This temporary final rule is effective from 7:30 a.m. on August 1, 2015 to 11:30 a.m. on August 1, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2015-0188]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone (617) 223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
CFR	Code of Federal Regulation
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum of 1983

A. Regulatory History and Information

On May 8, 2015 we published a notice of proposed rulemaking

(NPRM) entitled Safety Zones; Misery Challenge, Manchester Bay, Manchester, MA in the Federal Register (80FR26514). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish regulatory safety zones.

By establishing a temporary safety zone, the Coast Guard will ensure the protection of the event participants, support vessels, and maritime public from the hazards associated with the event.

C. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard provided a comment period of 30 days and no comments were received. There are no changes to the regulatory text.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, this safety zone will be in effect for only 4 hours in the morning when vessel traffic is expected to be light. Second, vessels may enter or pass through the safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide notification to the public through Broadcast Notice to Mariners well in advance of the event.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

For all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the

FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A written environmental analysis (EA) checklist and categorical exclusion determination (CED) are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C., 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add a new §165.T01-0188 to read as follows:

§ 165.T01-0188 Safety Zone - Misery Challenge - Manchester Bay, Manchester, Massachusetts.

(a) General. Establish a temporary safety zone:

(1) Location. The following area is a safety zone: All navigable waters, from surface to bottom, within one hundred (100) yards from the participants and vessels in support of events in Manchester Bay, Manchester, MA, and enclosed by a line connecting the following points (NAD 83):

<u>Latitude</u>	<u>Longitude</u>
42°34'03" N	70°46'42" W; thence to
42°33'58" N	70°46'33" W; thence to
42°32'32" N	70°47'45" W; thence to

42°32'58" N 70°48'40" W; thence to point of origin.

(2) Effective and enforcement period. This rule will be effective on August 1, 2015, from 7:30 a.m. to 11:30 a.m.

(b) Regulations. While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP), Coast Guard Sector Boston or the COTP's representative. However, any vessel that is granted permission by the COTP or the COTP's representative must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center).

(c) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 1226.

(d) Notification. Coast Guard Sector Boston will give notice through the Local Notice to Mariners, Broadcast Notice to Mariners, and to mariners for the purpose of enforcement of this temporary safety zone. Also, Sector Boston will notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(e) COTP representative. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: June 25, 2015

C. C. Gelzer
Captain, U.S. Coast Guard
Captain of the Port Boston

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7/13/2015]